IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 28298 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ATMIYA VALLABH SEVA NIKETAN TRUST - Petitioner(s)
Versus
THE STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR SAURIN A MEHTA for Petitioner(s) : 1,
MR SUNIT SHAH, GP WITH DIPAN DESAI AGP for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1, 3,
MR SN SHELAT WITH MRS VD NANAVATI for Respondents: 2,
MR SUNIT S SHAH for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 03/12/2007

ORAL JUDGMENT

1. Rule. Learned advocates for the respondents are directed to waive service. In light of the view that the Court is inclined to adopt the petition is taken up for final hearing and disposal today.

2. This petition has been filed praying for following reliefs:

> *(a) Your Lordships may be pleased to issue a writ of mandamus, directing the respondent No.2 i.e. University to grant affiliation to the present petitioner for the year 2007-08, pursuant to the application made by the petitioner herein;*
>
> *(b) Pending admission, hearing and final disposal of this petition, Your Lordships may be pleased to allot the students to the petitioner institution and meanwhile direct the respondent No.2 University to grant an affiliation;*

(c) Be pleased to pass such order and further order/s as may be deemed fit and proper in the interest of justice.

3. Before proceeding further it is necessary to clarify that the way prayer (b) is worded, the only thing that can be said is it is not happily worded. The petitioner in-fact intends to claim for a direction qua respondent No.3-Committee for allotment of students and not the High Court, for obvious reasons.

4. The petitioner-Institute approached All India Council For Technical Education (AICTE) seeking permission to establish a new Pharmacy College. On 9th October, 2007 AICTE issued a letter of approval permitting establishment of a new Bachelor of Pharmacy College in the name and style of Atmiya Vallabh Seva Niketan Trust, Village : Ankodia, Tal. & Dist.: Vadodara with an intake of 60 students. On the basis of the said letter of approval the petitioner approached respondent No.2-University on 12.10.2007

seeking grant of affiliation and for conducting of local inspection by constituting a Local Inspection Committee. On the same day, namely, 12.10.2007 the petitioner also approached respondent No.3-Joint Admission Committee for allotment of students for academic year 2007-08. On 22nd October, 2007 a reminder was sent by the petitioner to respondent No.3-Committee for allotment of students. In absence of any response from either respondent No.2-University or respondent No.3-Committee, the petitioner approached this Court on 25th October, 2007.

5. Upon Notice having been issued both respondent No.2-University as well as the other respondents have put in appearance. On behalf of respondent No.2-University in the Affidavit-in-reply it is stated thus:

> *"1. I may be permitted to state that grant of affiliation process takes time. After letter of approval is issued by AICTE, the University has to follow its own process for grant of affiliation.*

> *2. That Joint Admission Committee appears to have granted admissions to the students for technical courses on the basis of approval letter issued by AICTE without waiting for grant of affiliation and also without insisting of recommendatory letter from the University. It is the duty of the Joint Admission Committee to allot students on the basis of the approval letter issued by AICTE and can caution the students that admission granted would not entitle them for grant of Academic Term and/or eligibility to appear at the examination".*

6. On behalf of respondent No.3-Committee Affidavit in reply dated 27th November, 2007 has been filed. In paragraph No.9 of the said Affidavit the following averments are made:

> *"9. In the present case the first admissions (counseling) process was started on 10.07.2007 and continued upto 18.07.2007. Thereafter reshuffling was taken up from 07.09.2007 to 16.09.2007 and further admissions were also granted on 18.09.2007. After 18.09.2007, no admissions have been granted in engineering degree college or pharmacy degree or diploma*

college and the students have started their studies. Therefore any approval granted after completion of admission process does not mean that the State Government is bound to admit the students and that too without even affiliation".

7. The petitioner has tendered Affidavit-in-Rejoinder wherein the averments made by respondent No.3-Committee have been disputed in the following words in paragraph No.4.6:

"4.6 I deny the averments and contentions raised in paragraphs 8 and 9 of the Affidavit-in-Reply. I deny that the last admission was granted on 18.09.2007, by JAC-PC. I say and submit that after 18.09.2007, more than 750 students have been granted admissions by JAC-PC. I say and submit that on 24.10.2007, Respondent No.1 Government addressed a letter to Respondent No.3 JACPC directing to grant admission in Polytechnic Diploma Courses on their 750 seats. The JAC-PC has granted admission between 5th and 8th November, 2007. The said letter is annexed to the present Affidavit at Annexure-"I". I deny that admission process is complete. I further say and and submit that JAC-PC itself has

permitted to fill up the vacancies in several self-financed Pharmacy Colleges vide its order dated 30.10.2007, i.e. after 18.09.2007, and those seats are filled up after 01.11.2007 and, therefore, admissions are finally granted after 01.11.2007 by JAC-PC. In view of the aforesaid what is contended in paragraph 9 of the Affidavit-in-Reply that no admission was granted after 18.09.2007 is blatant lie and, therefore, what is contended in paragraphs 8 and 9 is misconceived by facts".

8. Responding to the Affidavit-in-Rejoinder on behalf of respondent-Authority in Affidavit in Sur-Rejoinder it is stated:

"14. Now dealing with the contentions raised in the affidavit in rejoinder, it is submitted that the contentions raised in therein are not true and denied. The contentions of para 3 are made with an ulterior motive to mislead this Hon'ble Court by replying upon absolutely inapplicable documents and letters. Reliance placed on the letter dt.24.10.2007 of the State Government directing to allot 750 students to 5 Diploma Engineering Colleges, is absolutely misconceived and baseless. It is submitted that firstly the said colleges

are Diploma Level colleges wherein affiliation of University is not required, whereas in the case of the petitioner which is a degree level college, affiliation of the University is mandatory. Secondly, the said colleges were processing letter of approval from AICTE which was subsequently withdrawn against which the said colleges approached the Appellate Committee of AICTE which allowed the appeals and therefore the earlier approval had again become operative without any condition regarding affiliation. In the present case the petitioner has been granted approval for the first time and that too subject to certain terms and conditions which are required to be followed. Therefore, the letter dt.24.10.2007 has no applicability to the facts of the present case".

9. The learned advocate for the petitioner has submitted that in the first instance both the respondent No.2- University and respondent No.3- Committee have failed to discharge their duties in accordance with law within reasonable time frame despite the petitioner having approached both the respondent-Authorities on 12.10.2007. That no explanation is forthcoming as to why respondent No.2-

University did not grant affiliation, or for that matter, did not take any action on the application moved by the petitioner despite there being a letter of approval from AICTE in favour of the petitioner.

9.1 In so far as respondent No.3-Committee is concerned, on one hand the inaction on part of the said committee *vis-a-vis* the petitioner has been assailed, while on the other hand, action in favour of different Institutions (5 Diploma Colleges and 3 Institutions referred to in paragraph No.4.4 of the Affidavit-in-Rejoinder) has been assailed on the ground of discrimination. It was submitted that the aforesaid Institutions (5 and 3) were alloted students after 18.09.2007, and without affiliation, respectively. Therefore, respondent No.3- Committee must be directed to allot students to the petitioner-Institution also. It was further submitted that, just as in case of other Institutions where undertaking was obtained, the petitioner is ready and willing to furnish similar undertaking to complete the requisite number of days for imparting education, namely, 180

days upon the petitioner being alloted students as prayed for.

10. The learned AGP appearing on behalf of respondent-Authorities has submitted that as stated in the Affidavit-in-reply and the Affidavit in Sur-Rejoinder, the petitioner-Institutions stood on a factually different footing *vis-a-vis* the 5 Diploma Colleges and the 3 Institutions referred to in paragraph No.4.4 of the Rejoinder Affidavit. In relation to the 5 Diploma Colleges it was submitted that the said Colleges had originally been granted approval by AICTE, which stood withdrawn, the withdrawal was challenged in appeal and the Appellate Authority having restored the approval, allotment of students had been made considering the point of time when the approval had been granted. In relation to the other 3 Institutions, the submission was that the Universities, namely, North Gujarat University and the Gujarat University had submitted letters of recommendation even before affiliation was granted and on basis of such recommendatory letters, students had been alloted. The learned AGP therefore contended

that there was no discrimination in so far as the petitioner-Institution is concerned. Lastly it was submitted that in similar set of circumstances Division Bench of Bombay High Court in the case of *Atharva Institute of Management Studies & Ors. V/s. Directorate of Technical Education, Maharashtra State & Ors.* in Writ Petition No.1645 of 2007 in Judgment rendered on 20.09.2007 had categorically ruled that mere granting of approval by AICTE does not vest any right in an Institution for allotment of students in the mid-term.

11. In the letter of approval dated 09.10.2007 issued by AICTE the following Note at the bottom of Paragraph No.1 is relevant:

> *"NOTE: - The Letter of Approval (LOA) shall be valid for two years from the date of issue of letter of approval for obtaining affiliation with concerned University and fulfilling State Government requirements of admission".*

12. Similarly, the first sentence of paragraph No.2 once again reiterates that the approval is valid for two years from the date of issue of letter. It is further stated that the approval is subject to fulfillment of various conditions stipulated and Condition No.C reads as under:

> *"(C) That the admissions to the courses shall be made only after the affiliating University / State Board has given permission to start the courses".*

13. Therefore, in the first instance, on a plain reading of a letter of approval it becomes apparent that a person in whose favour approval is granted by AICTE does not derive any vested right to seek allotment of students immediately at any point of time. Hence, the insistence of the petitioner that students must be alloted for academic year 2007-08 cannot be accepted. When period of validity of Letter of Approval issued by AICTE is read in conjunction with aforesaid condition (C) it becomes clear that AICTE is aware that affiliation and allotment of students would take some time and the University /Examining Body and the Authority granting admissions

cannot be hurried without verifying whether Condition (A) is also fulfilled, namely, whether an adequate infrastructure and all other facilities as directed as per Norms and Guidelines of AICTE are available.

14. Respondent No.2-University has stated in the Affidavit that grant of affiliation process takes time. During course of hearing learned Senior Advocate appearing on behalf of respondent No.2-University submitted that the University had been permitting enrollment of students upon the students being alloted by the Admissions Committee or by virtue of the orders made by the Court, but respondent No.2-University firmly believes and contends that there should be no allotment of students / admission of students unless and until the process of affiliation is over, or the University issues a recommendatory letter. In-fact, that is the grievance voiced in the first sentence of paragraph No.2 of the Affidavit-in-reply filed by the University, namely, grievance against respondent No.3-Committee.

15. Respondent No.3-Committee has taken stand

that after 18.09.2007 no admissions have been granted in Engineering Degree College or Pharmacy Degree or Diploma College and hence, no mandate should be issued by the Court to allot students once academic term has commenced. It is further the stand of the respondent State-Authorities that the instances cited on behalf of the petitioner in relation to 3 Institutions cannot assist the case of the petitioner as allotment of students in all the three cases had been made prior to 18.09.2007 on the basis of recommendatory letters issued by the respective Universities. The Court has no reason, no material, to doubt the aforesaid factual statement made on behalf of respondent-Authorities. On a conjoint reading of various averments made in the affidavit-in-reply, affidavit-in-rejoinder and affidavit-in-Sur-Rejoinder it becomes clear that the petitioner has failed to establish any case of discrimination. The instances cited on behalf of the petitioner do not show that the said cases are in any way similarly situated to the case of the petitioner.

16. There is one more issue. On behalf of the

petitioner it was contended that in case of students alloted subsequently in the vacancies that have arisen there would be possible shortage of completion of the requisite number of days but once the College undertakes to complete the studies by running the college during vacation and/or holidays the Court should not turn down the plea of the petitioner. In this connection, one may usefully reproduce what is stated by this Court in the case of *Chanasma-Patan Taluka Gram Vikas Higher Education Trust V/s. Hemchandracharya North Gujarat University* in Special Civil Application No.24133 of 2007 in Judgment rendered on 30.10.2007:

> *"15. As regards the contention of running the college during vacation and on holidays, it is necessary to take note of the fact that vide order dated 14.11.2006, in the case of a similar petitioner intending to run B.Ed. Course, in Special Civil Application No. 22256 of 2006 in the case of Shri Anjuman Education Trust Vs. State of Gujarat, the following order came*

to be made :

“3. It is also necessary to record that in a second set of proceedings being Letters Patent Appeal No. 1279 of 2006 in the case of Shivshakti Education Charitable Trust Vs. State of Gujarat the same Division Bench vide order dated 10.10.2006 came to the conclusion, after considering its previous order dated 9.10.2006 in Shri Anjuman Education Trust Vs. State of Gujarat, the case of Vrundavan Kelavani Mandal Supasi Sanchalit (supra), that as time is of essence and no reasonable time is available hereafter to Shri Anjuman Education Trust Vs. State of Gujarat, complete the process of admission and for completion of course in the rest of the days available in the academic session it is not possible to permit any institution to grant admission for this academic session. Accordingly the Appeal was dismissed.

4 Against the subsequent order dated 10.10.2006 the petitioner therein carried the matter in Appeal and sought Leave to Appeal being SLP (Civil) No.17380 of 2006 and cognate matters. All the petitions came up for hearing before the Apex Court on

6.11.2006 and the Apex Court has recorded that the Court was not inclined to interfere with the impugned order. The Special Leave Petitions were dismissed without prejudice to the rights of the petitioners to move a fresh application seeking permission to admit students from the next academic year.

5 In the aforesaid set of facts and circumstances of the case it is abundantly clear that if on 6.11.2006 the Apex Court found that the order made by the Division Bench of the High Court on 10.10.2006 holding that sufficient time was not available for Shri Anjuman Education Trust Vs. State of Gujarat, completing process of admission and the academic course, nea Shri Anjuman Education Trust Vs. State of Gujarat, nearly a month thereafter it cannot be gainsaid that the said order would operate with greater rigour.

6 Therefore, without entering into any discussion on merits of the issue involved between the parties suffice it to state that considering the remainder period of academic year that is available no relief can be granted to the petitioner as it would not be possible to complete the process of admission and the academic

course during the balance period of academic year."

16. In the case of State of U.P. And others Vs. D.K. Singh and others, AIR 1987 SC 190 the Supreme Court was called upon to decide whether a course of study should commence in January or July of a year. The Supreme Court stated thus :

"3. Having considered the matter we think that the High Court was not justified in interfering in a matter of such an academic nature as this. The question whether a course of study should commence in January or July of a year in a post graduate medical institution is dependent on number of factors like the availability of seats, the availability of beds in the Hospital, the availability of teachers, laboratories and equipment and perhaps a host of other factors with which we are not familiar. Ordinarily, it should, therefore, be a matter best left to the University. In the case of medical studies the Medical Council of India must also have a say in the matter. We find that the Medical Council of

India has prescribed a teacher-student ratio of 1:1 for post graduate medical courses. To have two parallel post graduate medical courses running simultaneously will certainly disturb the teacher-student ratio. This is certainly a serious matter concerning the standard of medical education and cannot be lightly brushed aside. We also notice that admissions to post graduate courses in all medical colleges in Uttar Pradesh are made once a year only and never twice a year. We do not think that the authorities can be said to have acted arbitrarily and unreasonably in not departing from the practice which they had invariably been following. When an academic year should commence and when it should end is eminently a matter for the education authorities and not for the court. We cannot dislocate the time schedule of the university merely for the convenience of a few students. The appeal is, therefore, allowed. The judgment of the High Court is set aside and the writ petition is dismissed.
Appeal allowed”..

17. In the case of Sagar Education & Charitable Trust Vs. State of Gujarat & Ors

in Special Civil Application No. 19132 of 2006 and cognate petitions on 27.09.2006 this Court while rejecting similar contentions in case of petitioners seeking allotment of students to P.T.C. Colleges observed :

"13. In the conclusion, I find that it is not possible to accept the petitions. Granting any order in favour of the petitioner would only amount to unduly hurrying the process of granting of admissions eventually resulting into a curtailed educational activities for the first year of otherwise two year course. I fail to understand how the petitioners contend that even if the admissions are granted at this stage, it would be possible for them to impart education for actual 180 days as required under the rules. Calculations placed on record by the petitioner do not inspire confidence. As noted earlier, it is impermissible to start these colleges before Diwali Vacation. Effectively, therefore, students would attend classes only from 1st November or thereabouts. Examinations are to be conducted in April or May 2007. Less than

six months time will be left. Their stand however, appears to be that they would curtail vacations, they would work on Sundays and public holidays and would add one hour in the morning and evening session of the college to ensure fulfillment of 180 days of actual educational activities. Only to permit the petitioners to start colleges for this academic year to stretch the requirements to such unreasonable limits cannot be countenanced. Educational institutions set up their calendars as per long standing practise and norms. Students who have to undergo rigorous training, require periodical breaks. Holidays, Sundays and vacations are meant for recreation and recouping. Certain number of hours are fixed for active classes so that for the remaining period, students either may prepare themselves for studies or divert time for recreational activities. By mindlessly adding additional coaching time and by providing for working of college round the clock through out the year would completely destroy this purpose and would leave the foundation of the students weak. Human mind cannot work as Robot and cannot be expected to absorb training without enough gaps to strengthen the foundation. It is unfortunate that the petitioners who seek to espouse the interest of the

students also; come up with suggestions of running their course virtually without breaks only to suit their purpose. Both ideas run counter to each other."

17. Therefore the position in law is that once an academic schedule had been fixed the Court is not empowered to disturb the same. The relief in form of a direction for allotment of students thus cannot be granted in the fact situation of the case.

18. However, the respondent-University is directed to complete the process of affiliation well within the time before commencment of academic year 2008-09. Similarly, respondent No.3-Committee is directed to make allotment of students to the petitioner for academic year 2008-09 without insisting for a fresh application for the said academic year in light of the fact that the letter of approval issued by AICTE on 09.10.2007 enures for a period of two years from the date of issue, and there is no objection qua the application moved by the petitioner.

19. The petition is accordingly allowed to the aforesaid extent subject to what is stated

hereinbefore. Rule made absolute accordingly. There shall be no order as to costs.

(D.A.MEHTA, J.)

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